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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of  
Douglas D. DeMasi, Sr.  
SN 09/845,999  
Filed: 9/24/2001  
For "Universal Flying Hawk"

: Art Unit 3725  
: Examiner Miller, Bena B.

8 Scenic Dr.; Hagan Farms  
Poughkeepsie, NY 12603-5521  
May 4, 2009

THE BOARD OF PATENT APPEALS AND INTERFERENCES

Supplemental Appeal Brief

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Mail Stop APPEAL BRIEF - PATENTS

Sir:

Appellants hereby file in triplicate a Supplemental Appeal Brief in support of the Brief dated January 24, 2009 and filed 29 January 2009, in response to the Notification of Non-Compliant Appeal Brief (37 CFR 41.37) mailed 4/23/09 and stating:

"4. (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

4. Summary of claimed subject matter must refer all independent claims on appeal (44) to specification by page and line number or paragraph number and to the drawings, if any.

Entire brief is not required only the section found defective.”

Appellant rewrites “defective” Appeal Brief section as follows (strikethrough of canceled material; underlining of new material):

(v) Summary of Claimed Subject Matter.

Claims 21, 28, 34, and 38 are the independent claims involved in the appeal.

Claim 21 is directed to a rider recreational product having a wing section (wing 12 - Figs. 1, 3, 4 & 5; ~~2<sup>nd</sup> paragraph~~ lines 9, 11, 16, & 22, page 7 of Second Substitute Specification) and a fuselage or tail section (surfboard-like fuselage or tail section or portion 14 - Figs. 1, 2, 4 & 5; ~~2<sup>nd</sup> paragraph~~ lines 10, 12, 16, & 17, page 7 of Second Substitute Specification) for skimming on water and flying through the air aerodynamically and separable into two sections. The product comprises a first section constituting the wing of the product and deriving its lift in flight from forces resulting from its motion through air (~~last sentence, last paragraph~~ lines 9 & 10, page 9; sentence beginning in last line on page 10, through last sentence (lines 8 & 9) in first full paragraph on page 11). It must be independently usable as a rideable element (paragraph beginning (penultimate line) on bottom of page 7 and continuing on page 8 (through line 11)). A second section constitutes the fuselage or tail section of the product and is independently usable as a surfboard or ski (surfboard-like fuselage or tail section or portion 14 - Figs. 1, 2, 4 & 5; ~~2<sup>nd</sup> paragraph~~ (lines 6 to 21), page 7 of Second Substitute Specification; paragraph beginning (line 17) on bottom of page 9 and continuing on page 10, and the next paragraph (through line 10)).

Claim 28 is directed to a board usable as a fuselage or tail section (fuselage or tail section 14 - Figs. 1, 2, 4, & 5; lines 10, 12, 16, & 17, page 7; paragraph beginning (line 17) on bottom of page 9 and continuing on page 10 to line 2, and the next paragraph (lines 3 – 10)) of a recreational product for skimming on water and flying through the air aerodynamically and usable independently as a surfboard or ski. The board comprises a generally thin and flat elongated portion, a wider rear end on the elongated portion, and thin fins 48 extending upwardly when used as a ski and downwardly when used as a surfboard (Fig. 4; first sentence (lines 17 – 19), last paragraph, page 9) and longitudinally (Fig. 4; second sentence (lines 19 – 21), last paragraph, page 9) from a surface of the wider rear end and that are upwardly when the board is attached to the recreational product for aiding control when the product is in motion aerodynamically.

Claim 34 is directed to a device comprising a thin, wide body (wing 12 - Figs. 1, 3, 4 & 5; ~~2<sup>nd</sup> paragraph~~ lines 10, 12, 16, & 17, page 7 of Second Substitute Specification) usable as an aerodynamically-supporting wing of a waterborne and airborne recreational vehicle and independently as a rideable element. It comprises a central front end portion (central front end 38 - Figs. 1, 3, 4 & 5; 2<sup>nd</sup> paragraph (lines 11 – 16) of page 9), a wide rearward portion, and a central rearward portion having a rearward facing opening (rearward facing opening or socket 16 - Fig. 3; lines 10, 12, 15, & 17 of page 7, and 14 of page 10) for receiving an attachment rendering the body the wing of a recreational vehicle 10 (Figs. 1, 4 & 5; lines 7, & 12 of page 7, and 15 of page 10).

Claim 38 is directed to a rider recreational product 10 (Fig. 1, 4, & 5; lines 7, & 12 of page 7, and 15 of page 10) having a wing 12 (Figs. 1, 3, 4 & 5; lines 9, 11, 16, & 22, page 7) and a fuselage or tail section 14 (Figs. 1, 2, 4 & 5; lines 10, 12, 16, & 17, page 7) for skimming on water and flying through the air aerodynamically (last sentence (lines 20, 21), last paragraph, page 8; sentence beginning in last line (line 23) on page 10, through last sentence (line 9) in first full paragraph on page 11) and separable into two sections. It comprises a first section constituting the wing 12 (Figs. 1, 3, 4 & 5; lines 9, 11, 16, & 22, page 7) of the product and deriving its lift in flight from forces resulting from its motion through air and independently usable as a rideable element, and a second

section 14 (Figs. 1, 2, 4 & 5; lines 10, 12, 16, & 17, page 7) constituting the fuselage or tail section of the product and independently usable as a surfboard or ski. The first section has longitudinally-extending control fins 34 (Fig. 4; first paragraph (lines 1-10) on page 9) on its underside for withstanding rugged or slow turns in water and air.

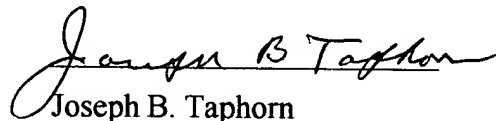


#### REMARKS

It is believed that the Summary of Claimed Subject Matter now refers all independent claims on appeal, to the specification by page and line number or paragraph number and to the drawings.

Appellants regret any inconvenience occasioned by the omissions.

Respectfully submitted,

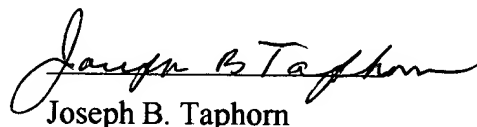
  
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CERTIFICATE OF MAILING - The undersigned certifies that this correspondence addressed to the Commissioner for Patents, P.O. 1450, Alexandria, VA 22313-1450, Mail Stop Appeal Brief - Patents, has been deposited in the United States Postal System as first class mail with sufficient postage on May 4, 2009.

  
Joseph B. Taphorn